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ABSTRACT

This booklet describes in general terms the various federal and state laws, rules, and regulations about which Oregon teachers must knowledgeable. Knowledge of laws prohibiting discrimination is required by Oregon Revised Statute 342.123. The Teacher Standards and Practices Commission permits applicants for licensure to demonstrate knowledge of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and state and federal statutes prohibiting discrimination. Applicants who qualify to satisfy the requirements of ORS 342.123 through signing an affidavit are instructed to carefully read the information contained in the booklet and answer study questions. The booklet focuses on eight areas: (1) "Why Do You Need to Know the Law?"; (2) "What Laws Affect Schools in Oregon?"; (3) "Categories of Persons Protected by Discrimination Laws"; (4) "Areas of Potential Discrimination in the Education Setting"; (5) "What Recourse Do People Have if They Feel the Law Has Been Violated?"; (6) "Specific Procedures School Districts are Required to Follow"; (7) "Self-Study Questions"; and (8) "Discussion Guide for Self-Study Questions." An appendix describes Oregon statutes, Oregon administrative rules, federal statutes, federal regulations, court cases, and supp federal supplemental reporter. (SM)

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PREFACE

This brochure describes in general terms the various federal and state laws, rules, and regulations about which Oregon teachers must be knowledgeable. Knowledge of laws prohibiting discrimination is required by Oregon Revised Statute 342.123.

The Teacher Standards and Practices Commission permits applicants for licensure to demonstrate knowledge of Title VI of the Civil Rights Act of 1964. Title IX of the Education Amendments of 1972, and state and federal statutes prohibiting discrimination as follows:

(1) Graduates of Oregon approved programs may submit either a Preparation for Teaching Report, Form C-2, verifying completion of an approved program since September 1, 1978, or a statement verifying satisfactory completion of a Commission-approved workshop or course offered by a teacher education institution, community college, school district, or other Commission-approved agency or organization.

(2) An applicant from out of state may submit an affidavit for the first Oregon license assuring that he or she has read *Discrimination and the Oregon Educator* and has completed the self-study questions. This affidavit is acceptable for any further licensure for one year, but the applicant must complete a program, workshop, or course as described in section (1) of this rule for any application for licensure after that time.

(3) An applicant residing outside of the state

and not employed by an Oregon school may renew or reinstate an Oregon license upon submission of an affidavit assuring that he or she has read *Discrimination and Oregon Educator* and has completed the self-study questions. The applicant must complete a program, workshop, or course as described in section (1) of this rule for the first application following establishment of residence in Oregon or employment by an Oregon school.

(4) An applicant for renewal or reinstatement of an Oregon license who resides in Oregon or who is employed in an Oregon school must demonstrate knowledge through one of the options set forth in section (1) of this rule.

(5) Demonstration of knowledge through options set forth in section (1) of this rule is required only once. See also ORS 342.123(2) pertaining to this matter.

Applicants who qualify to satisfy the requirements of ORS 342.123 through signing an affidavit are instructed to carefully read the information contained herein and answer the study questions. (Suggestions for discussion of the study questions are provided on pages 29-30.) They should then provide the information requested on the affidavit on the inside back cover of this brochure, sign the affidavit, and enclose the document with an application for issuance of a license.

The first edition of *Discrimination and the Oregon Educator* was written for the Commission in 1978 by Barbara Caulfield, then Assistant Professor of Law, University of Oregon. Over 35,000 copies of that edition were distributed.

Based upon suggestions received from interested citizens and groups, as well as subsequent legislation and court cases the Commission has published several subsequent editions with assistance and comments from the Oregon Department of Justice, the Region X Office for Civil Rights, the Oregon Department of Education and workshop providers. The Commission recognizes with appreciation the contributions which various persons, districts, and agencies have made in the development of materials and the implementation of ORS 342.123.

David V. Myton
Executive Director

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I. WHY DO YOU NEED TO KNOW THE LAW?

A. Required by Law

In order to hold a teaching license, Oregon educators are required by statute to demonstrate knowledge of civil rights laws and laws prohibiting discrimination. ORS 342.123(1) states:

> In addition to and not in lieu of any other law or rule or standard established by the Teacher Standards and Practices Commission, the commission shall require an applicant for a teaching license or any renewal thereof to demonstrate knowledge of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and federal statutes pertaining thereto, as well as state statutes prohibiting discrimination.

B. Liability for Damages or Other Legal Remedies

If school officials violate the civil rights of students, school staff members or members of the school community, the school district may be subject to a lawsuit requiring the district to pay money damages or to correct the action that the school district has taken. In either case, the school district may also be liable to pay attorney fees.

If a school employee is sued for actions taken in the course of the employee's job, the school district is required under Oregon law to provide a defense and to

pay damages awarded by the court. ORS 30.285(1) states:

> The governing body of any public body shall defend, save harmless and indemnify any of its officers, employees and agents ... against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty.

Although this statute protects a public employee from personal liability in most instances, the employee is not protected and may be subject to personal liability in the case of employee malfeasance or willful or wanton neglect of duty. Under this rule, a school employee will not be personally liable for job activities taken in good faith. However, the employee will not be protected from personal liability for malicious actions or actions that are outside the employee's scope of employment. In these instances, the employee's ignorance of the law is not necessarily an excuse. As a general matter, an employee who makes a mistake will not be subject to personal liability, but an employee who deliberately intends to cause harm or who acts with reckless disregard of the rights of others may be personally liable and may not receive a legal defense by the employing school district.

In summary, school employees and teachers need to be aware of anti-discrimination laws: (1) to make sure their actions do not violate the civil rights of students, staff and the public, (2) to protect the school district from liability and (3) to protect the employee from

personal liability for damages or attorney fees or both. More fundamentally, teachers are responsible as citizens and public servants to uphold the Constitution and the laws of our society and to see that these laws are applied fairly and equally to all persons.

This booklet is intended to assist school boards, administrators and teachers to better understand anti-discrimination laws that relate to public schools.

II. WHAT LAWS AFFECT SCHOOLS IN OREGON?

A. Federal Laws

1. **Title VI of the Civil Rights Act of 1964** (42 USC § 2000d) prohibits discrimination on the basis of race, color or national origin against any student in who attends a school that receives federal assistance. (Virtually all public schools receive some federal financial assistance.)

2. **Title IX of the Education Amendments of 1972** (20 USC § 1681 et. seq.) prohibits discrimination on the basis of sex against students or employees of a school receiving federal financial assistance.

3. **Title VII of the Civil Rights Act of 1964** (42 USC § 2000e) prohibits discrimination on the basis of race, color, national origin religion or sex against employees by employers of 15 or more people.

4. The **Equal Pay Act** (20 USC § 206d) prohibits employers from discriminating on

the basis of sex in determining employees' wages and fringe benefits.

5. The **Age Discrimination in Employment Act** (29 USC § 621 et seq) prohibits an employer from failing or refusing to hire, discharging, or otherwise discriminating against any individual who is 40 years of age or older with respect to compensation, terms, conditions or privileges of employment because of the individual's age.

6. **Section 504 of the Rehabilitation Act of 1973 (Section 504)** (29 USC § 706 et seq) prohibits schools and other public bodies from discriminating against students or employees on the basis of disability. Schools must make courses, facilities and programs available on an equal basis to all students. Schools must also make reasonable accommodations to insure that students with disabilities have an opportunity to participate fully in the school programs.

7. **Americans with Disabilities Act (ADA)** (42 USC § 12101 et seq) establishes "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." The ADA protects persons with disabilities from discrimination in employment, public services (including transportation), public accommodations and services operated by private entities.

   The most relevant parts of the ADA for the educator are Titles I and II. Under Title I, the ADA protects "qualified individuals with a disability," *i.e.*, those who, with or without reasonable accommodation, can perform the essential functions

of the employment position held or desired. Thus, employers may not "discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 29 USC § 12112(a).

Title II extends the duty not to discriminate on the basis of disability and the duty to provide reasonable accommodation to all programs providing services to the public, including those that do not receive federal financial assistance. Again, only "qualified individuals with a disability" are entitled to protection. Under Title II, such persons are defined as those who "with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity."

8. **Individuals with Disabilities Education Act (IDEA)** (40 USC § 1400 et seq.). The IDEA was enacted to ensure that children with disabilities receive the same educational opportunities as children without disabilities. States that accept federal IDEA funds must comply with the IDEA's requirements; all states have now opted to participate in the IDEA program.

Although the IDEA is based on anti-discrimination principles, it imposes ex-

tensive affirmative obligations on public schools. It entitles all children with disabilities to a free appropriate public education, beginning with preschool programs at age three and continuing through age 21. If possible, children with disabilities must receive education alongside their nondisabled peers. Each child with a disability is entitled to an individualized education program that is tailored to that child's specific needs and learning abilities, and the child's parents have a right to participate actively in the development of their child's program. Children with disabilities must be provided with supportive services (such as the assistance of a teaching aid or use of a computer) if these services are necessary for the child to participate in the regular school environment. Parents have a right to request a hearing before an independent hearing officer if the parents disagree with the educational placement or specify contents of their child's individual educational program.

9. **Equal Access Act of 1984** (20 USC § 4071) prohibits public secondary schools from discriminating against a student group or organization based on the religious, political, philosophical or other orientation of the group, when the school permits other student groups to meet on campus during noninstructional time. Religious groups must be formed by the students and not the school, and the school faculty must not participate in or promote the group activities. All groups, including religious groups, must be afforded the same privileges, such as access to the school newspaper, bulletin boards, public address system and yearbook. In Board of Education of Westside Community

Schools v. Mergens, 496 US 224 (1990), the United States Supreme Court held that if a school allowed just one extracurricular club, this triggers an obligation to afford privileges to any other student clubs, including religious clubs.

10. **Section 1983 of the Civil Rights Act** (20 USC §1980 et seq) permits individuals to file civil suits against school districts and other public bodies to recover damages, injunctive relief and/or attorney fees for actions that violate a person's constitutional rights or rights under a federal law. Section 1983 is the law most frequently used in the courts to enforce civil rights conferred by the Constitution or other federal laws.

B. Oregon Laws

Oregon's civil rights laws are similar to and often co-extensive with federal anti-discrimination laws.

1. **Employment Discrimination.** ORS 659.010 to 659.030 prohibit discrimination in employment on the basis of an employee's race, religion, color, sex, national origin, marital status, juvenile arrest record or age if the employee is age 18 or older. Under these laws, it is an "unlawful employment practice" to fire, refuse to hire, pay differential wages or benefits on the basis of any of the above factors. It is also an unlawful employment practice for a labor union to exclude a worker for one of these reasons or for an employer to retaliate against an employee who files a complaint alleging discrimination.

2. **Employment Discrimination based**

on disability. ORS 659.400 to 659.460 prohibit discrimination in employment on the basis of an employee's disability. It is an unlawful employment practice for employers to refuse to hire or to discriminate in other respects against a worker who has a mental or physical impairment when the worker's impairment does not prevent him or her from performing the job. The employer also has an obligation to make reasonable accommodations for the worker's disability.

3. **Work injuries.** ORS 659.410 to 659.420 prohibit discrimination against persons who incur on-the-job injuries. Employers may not discriminate against employees who apply for workers' compensation benefits, and these employees must be reinstated when they are able to return to work. Violation of these laws is an unlawful employment practice.

   The Civil Rights Division of the Oregon Bureau of Labor investigates and may enforce complaints of unlawful employment practices. In addition, an employee has a right to file a civil suit for damages, attorney fees and/or equitable relief which may include reinstatement and back pay. ORS 659.121.

4. **Housing.** Discrimination in the selling or renting of real property is prohibited on the basis of a person's race, color, sex, marital status, source of income, familial status, religion or national origin (ORS 659.033) or disability (ORS 659.425).

5. **Public Accommodations.** Discrimination in public accommodations is unlawful when based on a person's race, religion, sex, marital status, color, national origin,

age (if the person is 18 years of age or older) or disability. (ORS 659.037 and 659.425)

Any person may file a complaint with the Civil Rights Division of the Bureau of Labor alleging discrimination in housing or public accommodations. The Civil Rights Division may impose a civil penalty and/or an order to cease and desist a discriminatory activity. An individual may also file a civil action if a complaint to the Civil Rights Division has not been resolved.

6. **Education.** ORS 659.150 to 659.160 apply specifically to education. These statutes prohibit discrimination by any public school, whether elementary, middle level, high school or postsecondary, from discriminating against any person. Discrimination is defined as: "any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form or discriminatory in operation, either of which is based on age, disability, national origin, race, marital status, religion or sex."

   Noncomplying public schools may be subject to sanctions, including withholding of funds by the State Superintendent for Public Instruction, and postsecondary schools are subject to similar sanctions by the Commissioner of Community College Services or the Chancellor of the State Board of Higher Education. Grievance procedures are available for persons alleging discrimination under these statutes, and there is also a right to file a court action after grievance procedures have been exhausted.

7. **Complaint to Department of Education.** The Oregon Department of Education is required under OAR 581-001-0010 to investigate complaints that a school district has a policy or practice that violates the IDEA or Section 504. Noncomplying school districts may be ordered to take corrective action or lose state funding.

III. CATEGORIES OF PERSONS PROTECTED BY DISCRIMINATION LAWS.

The statutes listed above generally prohibit discrimination based on one of the following:

1. Race
2. National Origin
3. Religion
4. Sex
5. Age
6. Disability
7. Marital Status

In general, if a school or a school representative has a policy or takes an action that negatively affects someone (including a student, employee or member of the public) on the basis of one of the above attributes, then unlawful discrimination may exist. In some situations, a school may lawfully treat people differently based on one of the above characteristics, but only if the school can demonstrate a legitimate reason for the differential treatment. Courts are suspicious of this type of law or policy, especially if it differentiates on the basis of a person's race, religion or national origin. Laws that apply differently because of a person's race, religion or national origin

are almost always illegal and are given "strict scrutiny" by the courts. Recently the United States Supreme Court also held that laws that apply differently based on a person's sex are subject to a high level of scrutiny, if not "strict scrutiny." United States v. Virginia, 518 US _, 135 LEd2d 735 (1996) (State of Virginia violated equal protection rights when it barred a woman applicant from admission to a military college; laws which differentiate on the basis of sex are unconstitutional unless the state demonstrates "exceedingly persuasive justification" for them.)

A. Race and National Origin.

The category of race and color includes all racial groups and gradations of skin color within a racial group. National origin includes all persons whose ancestry is derived from a specific ethnic, cultural or nation-state grouping. For example, national origin includes persons of Spanish, Mexican, Chinese or Japanese ancestry.

B. Religion.

The religion must to some degree be recognized as such. A person could not be the sole practitioner of a religion and expect the religion to be recognized for purposes of anti-discrimination laws.

As discussed above, Congress enacted the Equal Access Act in part to assure that students be able to participate in religious organizations on campus to the same extent other student organizations are permitted. Under Oregon law, ORS 339.420, Oregon students may be released up to two hours a week to attend

religious instruction. These laws are intended in part to further the principle of free exercise of religious beliefs.

Although schools have an obligation to accommodate students' religious beliefs, this obligation has limits. For example, schools need not provide different textbooks because students or parents have religious objections to the content of the schools' textbooks. Brown v. Woodlawn Joint Unified School District, 27 F 3d 1373 (9th Cir 1994). Moreover, not all actions limiting religious expression in schools are necessarily discriminatory. Schools must also comply with the requirement under the United States and Oregon Constitutions that the government shall not promote a particular religious or religion in general. Under this requirement, the United States Supreme Court held in Wallace v. Jaffree, 472 US 38 (1985), that teachers may not lead prayers in the classroom or establish a daily period of silence for "meditation or voluntary prayer" because school children would likely perceive this practice as public endorsement of religion. See also Lee v. Weisman, 505 US 577 (1992) (Prohibiting prayers at high school graduation ceremonies as endorsement of religion.)

There are also limits to which schools must accommodate the religious beliefs of teachers. Under an Oregon statute, ORS 342.650, teachers are not permitted to wear religious dress while on the job. The Oregon Supreme Court held that this statute did not violate the constitutional rights of a teacher when her employer forbade her from wearing the white clothing and turban of the Sikh religion. Cooper v. Eugene School District No. 4J, 301 Or 358 (1986). Courts have also upheld

a school district's directive to a teacher not to display his personal Bible in the classroom and not to read it during classroom hours. Roberts v. Madigan, 921 F 2d 1047 (10th Cir 1990) cert den, 112 S Ct 3025 (1992), and a directive to a teacher not to discuss religious matters with students while on campus. Peloza v. Capistrano Unified School District, 37 F 3d 517 (9th Cir 1994), cert den, 115 S Ct 2640 (1995).

C. Sex, Marital Status and Sexual Orientation.

Sex discrimination or gender discrimination includes discrimination against either male or female persons. Marital status includes single, married, divorced or separated persons.

There are no Oregon statutes that specifically prohibit discrimination on the basis of sexual orientation. In fact, ORS 236.380 expressly states that no state official shall forbid the taking of any personnel action against a state employee based on the employee's sexual orientation, but the statute also states that an agency may adopt a policy that prohibits personnel actions that are not based on job related factors. This statute was passed by the voters in a 1988 initiative measure; it had the effect of repealing an executive order of the governor to prohibit discrimination against state employees based on sexual orientation. However, in Merrick v. Board of Higher Education, 116 Or App 258 (1992), the Oregon Court of Appeals upheld an administrative rule of the State Board of Higher Education which prohibited discrimination on the basis of sexual orientation. The court

also held ORS 236.380 unconstitutional to the extent it conflicted with the board's policy because it violated state employees' rights of free expression. The court found the statute would discourage state employees from telling others about their sexual orientation or from associating with persons or groups who advocate gay or lesbian rights. Thus, differential treatment of students or teachers on the basis of sexual orientation could be subject to attack because the policies infringe on rights of free speech and expression and because they conflict with employment policies that prohibit arbitrary treatment based on factors other than performance. (See e.g. TSPC rule OAR 584-020-0035 which requires that an offer of a teaching position be based only on professional qualifications.)

The 1995 Legislative Assembly enacted ORS 659.165 which prohibits local governments from enacting local laws that grant "special rights" or "singles out" persons based on sexual orientation. This law was intended to usurp ordinances adopted in some cities that limited the civil rights of homosexuals. However, this statute may be suspect in light of the decision by the U.S. Supreme Court in Romer v. Evans, 517 US __, 134 LED2d 855 (1996) which invalidated a Colorado statute that prevented localities from adopting laws to give homosexuals protection against discrimination. The Court held that a law which deprived a class of citizens (homosexuals) from civil rights afforded to all other citizens was a violation of equal protection under the law.

D. Disability.

The meaning of disability differs depending on the particular statute that applies. The Individuals with Disability Education Act (IDEA) covers only children with specific disabilities that are set forth in the statute. In contrast, section 504 and the Americans with Disabilities Act define a person with a disability very broadly to include a person with a physical or mental impairment that substantially limits a major life activity, a person with a record of such an impairment or a person who is regarded by others as having such an impairment. However, the remedies under section 504 and the ADA are more limited than those under the IDEA and are aimed primarily at eliminating restrictions and barriers to equal access to educational programs.

IV. AREAS OF POTENTIAL DISCRIMINATION IN THE EDUCATION SETTING.

The following are situations where different treatment or other types of improper actions by schools may occur:

A. Course Offering Imbalances.

Course offerings should be available to students regardless of age, disability, national origin, race, marital status, religion or sex. Special attention must be paid by the school to courses where there is an imbalance of students on one of these bases. For example, if a mathematics class has 90% males when the overall school enrollment is 50% male and 50% female, the school should evaluate the reasons for the imbalance. Is there a policy, practice or action by the school which results in the denial of access by

females to this mathematics course? If the school discovers that past discrimination or discouragement by a particular teacher has caused the denial of access to the class, the school must remedy the problem. The school could utilize its counseling staff to announce the school's policy of including females in the class and encouraging females to enroll. To take no remedial action in the face of a 90% to 10% male-to-female ratio, where the school's actions have contributed to the imbalance, may be considered as a continued denial of access by females to the course.

One area of course or program imbalance is the disproportionate enrollment of minority students in special education classes. Where there is a disproportionate rate of placement (or a disproportionate number of minority students who are determined to have a disability), it is wise to evaluate the program. Are teachers applying the same standards for referral? Are pre-referral strategies being used? Are the tests used for placement appropriate? Can the district determine why there is a disproportion? If not, the district should consider seeking outside help to address the issue.

B. Course or Program Access.

If certain categories of students are absent or in disproportionate numbers in a class or sequence of classes, the school should investigate the reason. The reason could be due to a teacher's or a department's reputation or disregard for certain groups of students. The situation may also be due to differential grading, administration of improper testing or a

counselor's advising students away from nontraditional classes for that group. For instance, a counselor may advise a male away from a clerical course because of a belief that the male student could not find a job in the field. This is a violation of the law prohibiting sex discrimination in access to courses. A student is entitled to access to any course for which he or she is academically qualified. The sex of the student should not be a factor that the staff member uses in making recommendations or determining eligibility. There is evidence that opportunities in nontraditional jobs will continue to expand for men and women. Therefore, stereotyped perceptions may be both inaccurate and illegal.

If a teacher treats females or minority students differently in a class, the school is in violation of the law. The school can be required to make efforts to correct this differential treatment and open access to the teacher's courses to females or minority students. Failure of the district to correct the situation, could mean that the district is in violation of the law.

C. Student-teacher interactions.

There are some obvious situations, such as teachers using derogatory terms in referring persons of a certain race, national origin or gender. However, there are more subtle forms of differential treatment. Since these forms are more difficult to recognize, they are listed here for consideration.

- **The invisible student**. A teacher fails to recognize for class discussion members of a racial or minority group. These stu-

dents become invisible to other students in the class and lose the benefit of classroom participation. Failure to recognize and speak with a minority student because the student is "difficult to understand" or "speaks with an accent" is to treat the student differently because of race or national origin. The same applies for interactions in extra-curricular activities or other school sponsored events.

- **The very visible student.** A teacher, with good intentions, may lavish praise on a student because of the student's sex, national origin or race. Overpraising a student for expected (or unexpected) behavior may project to the student and other students a stereotyped view of what tasks certain categories of students can do.

For example, sex bias may occur if a teacher praises females only for good social behavior, but praises males only for good academic performance. A teacher who praises a student in a wheelchair for tasks such as writing on the blackboard when no praise is given to other students may be indicating bias because the teacher did not expect the student to be able to perform the task. Praise should be based on the needs and individual abilities of the student and not by categories of race, disability or sex.

- **Stereotyped students.** Giving the role of monitors primarily to females or textbook distributors only to males suggests a stereotype of the strength of males and the behavior expectations of females. Why not let students volunteer for the different roles? Everyone might carry the amount of books he or she is

able or an opportunity to be a monitor at least once. Those students who were not successful could be given different roles. Stereotypes may also occur in text materials. Teachers should provide supplementary materials to correct stereotypes such as that certain minority groups only work in low paying menial jobs.

- **Separation by sex, race, national origin, or disability raises questions under the law.** Separation is permitted by ability groupings or by sex in contact sports in physical education. However, automatically placing all females together for the entire physical education class raises questions under the law. Separation of all students who are limited-English proficient into certain reading groups when not necessary for the students to address their need to develop language skills is a violation of the law. Students should be allowed to demonstrate their needs and abilities before placement. Under Title VI of the Civil Rights Act and ORS 659.150, students must be educated in integrated classes.

Segregation of children with disabilities simply because they are disabled is a violation of Section 504, the ADA and the IDEA. Students must be allowed to participate according to their individual needs and abilities.

- **Racial and sexual harassment.** Racial or sexual harassment includes actions based on race or sex that are sufficiently severe or pervasive to limit a student's opportunity to benefit from the school program or activity. This conduct constitutes a violation of Title VI of the Civil Rights Act and Title IX of the Education

Amendments. The school has an obligation to protect students from racial or sexual harassment, including harassment by one student to another. School officials who have knowledge or a report of alleged harassment have a duty to determine the nature of the problem and, if necessary, take corrective action to prevent it.

- Self-check of inappropriate and possibly unlawful teacher student interactions:

a. Do you make seat assignments or other assignments based on race, sex, age, national origin, disability, spoken language, marital status or religion which isolate or negatively affect students?

b. Do you use male pronouns or masculine references to the exclusion of female references?

c. Do you maintain eye contact, smile or stand close to some students more than others based on race, sex, religion or national origin?

d. Do you use the same type of disciplinary measures regardless of the above categories?

e. Do you praise students and punish students differently based on a student's race, sex, religion, disability or national origin?

f. Are your classroom materials and displays integrated with different categories of people in a variety of roles?

V. WHAT RECOURSE DO PEOPLE HAVE IF THEY FEEL THAT THE LAW HAS BEEN VIOLATED?

A. Employee Rights.

An employee may file a complaint with any of these agencies:

1. Equal Employment Opportunity Commission (E.E.O.C.), 2401 E Street NW, Washington, D.C. 20506, or the regional office of the E.E.O.C. in Seattle, Washington, for violations of Title VII of the Civil Rights Act of 1964.

2. Office of Civil Rights, 915 Second Avenue, Room 3310, Mail Code 109010, Seattle, Washington 99174, for violations of Title IX, Education Amendments of 1972.

3. Wage and Hour Division, U.S. Dept of Labor, Washington, D.C. 20210, for violations of the Equal Pay Act.

4. Civil Rights Division of the Oregon Bureau of Labor, in Portland, Salem or Eugene for violations of ORS 659.010 through 659.030.

Many of these laws require that a complaint be made within 180 days of the suspected violation or no action will be taken by the agency.

B. Student Rights.

Students may complain to any of the following agencies:

1. Office for Civil Rights, 915 Second Avenue, Room 3310, Mail Code 109010, Seattle, WA 99174, for violations of Title IX of the Education Amendments of 1972, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

2. The local school district, utilizing internal complaint procedures required by Title IX Education Amendments, Section 504, the ADA and OAR 581-021-0049. A complaint may also be filed with the Oregon Department of Education under OAR 581-001-0010 alleging violations or the IDEA or Section 504.

A complaint must be filed in accordance with the specific agency rules. However, the complaint should include at least: the name and address of the complainant; a description of the discrimination; names and addresses of the school and persons alleged to have discriminated; dates that the discrimination occurred.

VI. SPECIFIC PROCEDURES SCHOOL DISTRICTS ARE REQUIRED TO FOLLOW.

A. Federal Requirements.

To comply with Title IX of the Education Amendments, Section 504 and the ADA, all school districts should have completed the following requirements:

1. Conduct a self-evaluation using the federal regulations as a guide.

2. Develop, adopt and publish grievance procedures to resolve employee and student complaints.

3. Notify students, employees, unions, parents and applicants for employment of the intent of the school district to comply with these laws.

4. Publish a policy statement regarding nondiscrimination in bulletins and catalogues of the school.

5. Submit assurances as required by the Office of Civil Rights that the school is complying with these laws.

6. Appoint a staff member as a compliance officer and publish the name, address and phone number of the officer.

B. State Requirements.

All schools districts in complying with ORS 659.150 and OAR 581-021-0049 should adopt written procedures for prompt resolution of complaints of discrimination. Also school districts should develop and implement plans which assure that all students have opportunity for education as required by OAR 581-021-0046.

VII. SELF-STUDY QUESTIONS

Instructions: On a separate sheet, answer the questions and decide whether there is a violation of law and what action, if any, the school district should take to remedy the violation. Upon completion, compare your answers with the dis-

cussion guide on page 29.

1. Mary is my 11 year old daughter. She wants to participate in a field sports program in the fall, but there are no field sports available to her. She doesn't want to participate in swimming or tennis. There are boys' programs in field hockey and football, but the school told her she could not join the boys' field hockey team.

   a) Are there any violations of state or federal law?

   b) Please give any reasons for your decision.

   c) Action recommended, if any. State in two or three sentences what the school should do to address the issue.

2. My wife and I are from Mexico, and we speak Spanish in our home. We have a twelve year old son, named Juan who speaks both English and Spanish. Juan's teacher placed him in the basic reading group. She told me that all children who speak Spanish at home are placed in this class because they need extra attention and reading help.

   a) Are there any violations of state or federal law?

   b) Please give any reasons for your decision.

   c) Action recommended, if any. State in two or three sentences what the school should do to address the issue.

3. Jane is my twelve-year old daughter. She has cerebral palsy and uses a wheelchair. She is not permitted to go onto the playground with the other children because the teacher is concerned she might get hurt. Jane and another boy who is also in a wheelchair eat lunch in the classroom because the teacher says it takes them too long to get to the student lunchroom. Also she does not receive physical education because she is unable to run or participate in the other p.e. activities.

   a) Are there any violations of state or federal law?

   b) Please give any reasons for your decision.

   c) Action recommended, if any. State in two or three sentences what the school should do to address the issue.

4. Tan is a 14 year old student of Vietnamese origin. His parents have complained to the teacher that a group of Chinese students have been taunting him and have referred to him as "Vietnamese scum." Tan says he is worried that the Chinese students may physically assault him when he leaves the school grounds. The teacher is sympathetic but says the Chinese students have a right to express their opinions so long as they do not cause physical harm to Tan. The teacher also states that there is nothing the school can do about what happens off the school property.

   a) Are there any violations of state or

federal law?

b) Please give any reasons for your decision.

c) Action recommended, if any. State in two or three sentences what the school should do to address the issue.

5. Susan is a 16 year old high school student. She has complained to her counselor that in her computer lab some students have gained access to programs on the Internet that have a strong sexual theme. Some of the students have downloaded pictures and cartoons and have passed them around the room. Other students have made off color jokes about these materials. The teacher says these materials may be in bad taste but they do not amount to pornography. Susan feels uncomfortable and wants to drop the class.

   a) Are there any violations of state or federal law?

   b) Please give any reasons for your decision.

   c) Action recommended, if any. State in two or three sentences what the school should do to address the issue.

6. Melinda is 15 years old. She has enrolled in an automotive repair program. Her teacher has discouraged her from taking the class. He says that almost all mechanics are men and she would not be comfortable working in an auto repair setting. The teacher seldom talks to

Melinda unless Melinda specifically asks him a question. He shows more interest in the projects of the boys in the class.

a) Are there any violations of state or federal law?

b) Please give any reasons for your decision.

c) Action recommended, if any. State in two or three sentences what the school should do to address the issue.

7. Jane is ten years old. Her social studies textbook has no pictures or discussions of African-Americans except as slaves, manual laborers or domestic workers. Persons of other races are presented in various contexts.

a) Are there any violations of state or federal law?

b) Please give any reasons for your decision.

c) Action recommended, if any. State in two or three sentences what the school should do to address the issue.

8. Eva Jones is an African-American college student who has begun her student teaching program with a third grade class. During the first week, Eva was permitted to teach most of the class. After that, the cooperating teacher asked Eva just to grade papers and observe the class. She told Eva that the children cannot understand Eva because of her "Black accent." She believes the children will

learn bad speech patterns from Eva. Eva asked the children if they understood her. They told Eva they could understand, and they seemed to do well on a test Eva gave to cover her lesson.

a) Are there any violations of state or federal law?

b) Please give any reasons for your decision.

c) Action recommended, if any. State in two or three sentences what the school should do to address the issue.

VIII. DISCUSSION GUIDE FOR SELF-STUDY QUESTIONS

1. May be a violation of state and federal law. Federal regulations under Title IX of the Education Amendments require equal opportunity in sports for men and women. 34 CFR §106.41. If a school sponsors a team available to only one sex (and opportunities for members of that sex have previously been limited), members of the excluded sex must be allowed to try out for the team unless the sport is a contact sport. Field hockey is probably a contact sport. But there still must be an equal opportunity available for girls to participate in a fall sports program. If there are no field sports of any kind for girls, the school is probably not meeting its obligations. Recommendation: the school should assess whether there is interest in field hockey or another field sport among the female students. If the interest is strong and if girls' participation in a fall sports program is noticeably less

than boys, then the school should offer the sport to girls.

2. This is a probable violation of Title VI of the Civil Rights Act and ORS 659.150. The teacher is using national origin as a basis for placing students. She has assumed all children of Hispanic origin need to be in a special reading class. Each child's abilities should be objectively assessed before placement. Recommendation: Explain the law to the teacher; Juan and other students should be individually assessed; if necessary, Juan should be reassigned based on the assessment results.

3. This is a probable violation of Section 504, the Individuals with Disabilities Education Act (IDEA) and the Americans with Disabilities Act (ADA). To the extent possible, children with disabilities must be allowed to participate in activities with their nondisabled peers, and the school has an obligation to make reasonable accommodations to ensure participation. The IDEA requires that physical education be provided to students with disabilities. Recommendation: 1) Jane should be admitted to a physical education class that includes nondisabled students to the extent practicable. 2) Jane and the other boy should be allowed to eat lunch with all the other students. (Perhaps the school could allow them to move to the front of the line or make other accommodations to make sure they will have time to eat lunch with the other students.) 3) Jane should not be denied access to the playground based on vague concerns about safety. If necessary, the school should assign an aide or make other accommodations to assure that Jane can

safely interact with other children during playground activities.

4. If the school does nothing, it is a probable violation of Title VI of the Civil Rights Act. The students' actions have the effect of depriving Tan of an equal opportunity to participate in educational programs because of Tan's national origin. When the school has been notified that Tan is being harassed by other students, the school has an obligation to investigate the matter; failure to do so has the effect of sanctioning or tolerating the other students' conduct. Recommendation: Investigate the complaint. If the investigation shows that harassment is occurring, the school must take corrective action against the offending students. While the school cannot control conduct that occurs on the street or at a shopping mall during nonschool hours, the school should make efforts to be sure students are not subject to harassment or other threats that limit a student's access to the school program. The school should adopt policies and make sure students are aware of policies that racial harassment will not be tolerated. The school should also consider increasing education programs on cultural diversity and respect for other students. These efforts can help create a climate among students against harassment of students from minority groups.

5. If the school does nothing, it may be a violation of Title IX of the Education Act Amendments. The school has an obligation not only to prevent sexual harassment by its teachers and employees, but also take affirmative steps to prevent sexual harassment by student's peers.

Moreover, the source of the objectionable materials are through the school supplied computer programs. In this case, the students are engaging in conduct, i.e. distributing the sexually oriented materials, that may create a hostile learning environment in the computer class. This conduct may have the effect of excluding Susan from the school program. Recommendation: Allowing Susan to transfer to another class is probably not an adequate solution. The school should investigate whether the activity in the classroom could reasonably be considered to constitute sexual harassment and a hostile learning environment. If so, the teacher should prohibit students from accessing the sexually oriented materials, and the teacher should certainly prohibit students from disseminating any sexual materials that reasonably could create a hostile environment among the students.

6. This is a probable violation of Title IX of the Education Act Amendments. The different treatment of Melinda will discourage her from taking these courses and may effectively deny her access to the class. Recommendation: The teacher should be instructed on the requirements of the law and be required to treat Melinda the same as the male students. If possible, Melinda should be allowed to transfer to another class with a different teacher.

7. This is a violation of Title VI of the Civil Rights Act and of ORS 659.150. The textbooks are racially discriminatory. Recommendation: The textbooks should be replaced. Until this is accomplished, alternative books and supplemental materials should be used.

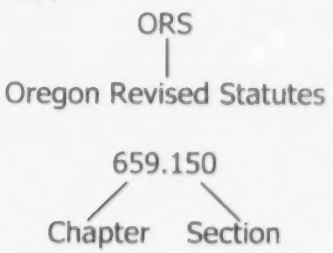
8. Possible violation of Title VI and VII of the Civil Rights Act. Many persons from different parts of the United States or from different racial or ethnic groups speak differently. This should not be the basis for denial of opportunity unless the student teacher was unable to carry out her responsibilities to the children in the class. If Ms. Jones was sufficiently communicating and carrying out her duties effectively, the cooperating teacher may have simply been expressing her personal bias against a "Black accent." Recommendation: The administration should observe the student teacher in the classroom to evaluate her effectiveness in communicating with students. Ms. Jones should not be denied access to the teaching program only because her speech patterns are different from most teachers in the school.

APPENDIX

A. Oregon Statutes

A statute is a law that is passed by the legislature. Oregon statutes are collected and codified as Oregon Revised Statutes and abbreviated as ORS. The numbers which follow ORS indicate the chapter and section where the statute is found.

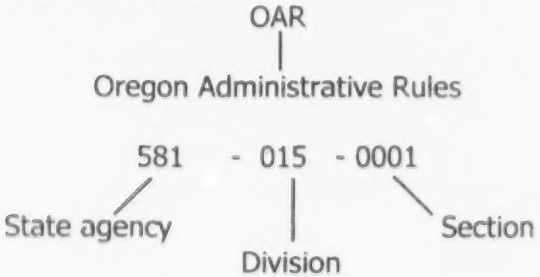
ORS 659.150



B. Oregon Administrative Rules

Administrative rules are laws that are enacted by state agencies to carry out the policies set forth in statutes. Rules in Oregon are Oregon Administrative Rules and are abbreviated as OAR. The numbers that follow OAR indicate the chapter and section where the rule is found. The chapter number indicates the state agency that created the administrative rule. For example chapter 581 designates the Department of Education, and chapter 584 designates the Teacher Standards and Practices Commission.

OAR 581-015-0001

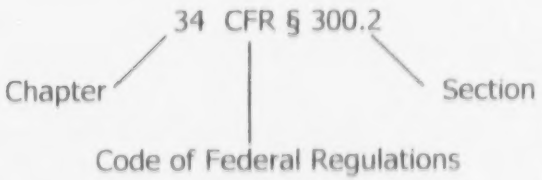


C. Federal Statutes

Federal laws often are given a proper name, such as the Age Discrimination in Employment Act. Most federal statutes are collected in whole or in part in the United States Code. The United States Code is arranged by subject matter into chapters and sections. For example education laws are found in volume 40 of the code. Citations appear as follows:

D. Federal Regulations

Federal regulations or rules are published by federal agencies and are codified under the Code of Federal Regulations. Chapters are arranged by subject matter and agency. For example, regulations of the U.S. Department of Education are published at chapter 34 of the Code of Federal Regulations.



Many federal regulations are not codified in the Code of Federal Regulations, but all regulations are published in the Federal Register.

E. Court Cases

All court cases have captions which contain the names of the parties. (For example, Lau v. Nichols) Most cases on appeal are published in a reporter that contains state cases or a reporter that contains federal cases. The reporter abbreviations for Oregon cases are:

Or Oregon Reports
(Oregon Supreme Court)
Or App Oregon Appellate Reports
(Oregon Court of Appeals)

The abbreviations for federal cases are:

US United States Report
(U.S. Supreme Court)

F. Supp Federal Supplement Reporter
(U.S. District Courts)

F.2d Federal Reporter 2d
(U.S. Appellate Courts)

F.3d Federal Reporter 3d
(U.S. Appellate Courts)

Court cases are cited first for the names of the parties, then the volume of the reporter, followed by the name of the reporter and the page where the case is printed and the year the case was decided. For example an Oregon Court of Appeals case may be cited as Emmert Industrial Corp. v. Sanders, 131 Or App 113 (1994).

Statutes and cases may be found in most law libraries.

JGM0587.MEM

AFFIDAVIT

STATE OF _____ County of _____

I, _____
(print full name)

do hereby verify that I have read the booklet Discrimination and the Oregon Educator and have completed the self-study questions contained in the back of the booklet. I am submitting this affidavit as a part of my application, under the administrative rules of the Teacher Standards and Practices Commission, as evidence that I am knowledgeable about the provisions of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 and federal and state statutes prohibiting discrimination as required by ORS 342.123.

Dated this _____ day of _____, 19____.

_____
(Signature)

_____
(Social Security Number)

Teacher Standards and Practices Commission
Public Service Building
255 Capitol Street NE, Suite 105
Salem, OR 9731-1332
WWW.ode.state.or.us/tspc
Contact.TSPC@state.or.us